

MONTANA LEGISLATIVE HISTORY

Chapter 266 19 79

Bill H 48 S _____ Original bill & history ✓C

H. Committee on Natural Resources

S. Committee on Local Government

Hearing Date(s) Jan 12 ✓C

Hearing Date(s) Mar 01 ✓C

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Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

CHAPTER NO. 266

HOUSE BILL NO. 48

INTRODUCED BY MANUEL

BY REQUEST OF THE CODE COMMISSIONER

IN THE HOUSE

January 4, 1979	Introduced and referred to Committee on Natural Resources.
January 6, 1979	On motion, joint rule 6-6 suspended and sponsor's signature allowed to be added to prefiled bill.
January 17, 1979	Committee recommend bill do pass as amended. Report adopted.
January 18, 1979	Printed and placed on members' desks.
January 19, 1979	Second reading, do pass. Segregated from the Committee of the Whole report. On motion taken from second reading and referred to Committee on Natural Resources.
January 20, 1979	On motion taken from Natural Resources Committee and referred to second reading. Second reading, do pass.
January 22, 1979	Considered correctly engrossed.
January 23, 1979	Third reading, passed. Transmitted to second house.

IN THE SENATE

January 24, 1979	Introduced and referred to Committee on Local Government.
March 2, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 5, 1979	Second reading, concurred in.
March 7, 1979	Third reading, concurred in as amended.

IN THE HOUSE

March 8, 1979	Returned from second house. Concurred in as amended.
March 14, 1979	Second reading, amendments adopted.
March 15, 1979	Third reading, amendments adopted. Sent to enrolling. Reported correctly enrolled.

HOUSE BILL NO. 48

INTRODUCED BY _____

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO LAND RESOURCES AND USE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 76-1-103, MCA, is amended to read:

"76-1-103. Definitions. As used in this chapter, the following definitions apply:

(1) "City" includes incorporated cities and towns.

(2) "City council" means the chief legislative body of a city or incorporated town.

(3) "Governing body" or "governing bodies" means the governing body of any governmental unit represented on a planning board.

(4) "Master plan" means a comprehensive development plan or any of its parts such as a plan of land use and zoning, of thoroughfares, of sanitation, of recreation, and of other related matters.

(5) "Mayor" means mayor of a city.

(6) "Person" means any individual, firm, or corporation.

(7) "Planning board" means a city planning board, a

county planning board or a joint city-county planning board.

(8) "Plat" means a subdivision of land into lots, streets, and areas, marked upon the earth and represented on paper, and includes re-plats, replats or amended plats.

(9) "Public place" means any tract owned by the state or its subdivisions.

(10) "Streets" includes streets, avenues, boulevards, roads, lanes, alleys, and all public ways.

(11) "Units of government" means any federal, state, or regional, ~~unit of government or any~~ county, city, or town.

(12) "Utility" means any facility used in rendering service which the public has a right to demand."

Section 2. Section 76-1-202, MCA, is amended to read:

"76-1-202. Qualifications of citizen members of city-county planning board. (1) The citizen members of the city-county planning board shall be ~~resident-freeholders-in~~ residents of the area over which the planning board has jurisdiction; provided, however, that at least two of such members shall be ~~resident-freeholders-in~~ residents of the area, if any, outside the city limits over which the planning board has jurisdiction and the two members appointed by the county commissioners shall reside outside the city limits but within the jurisdictional area of the planning board.

(2) Any citizen appointee may be removed from office

by a majority vote of the governing body of the governmental unit represented by such appointee."

Section 3. Section 76-1-212, MCA, is amended to read:

"76-1-212. Citizen members of county planning board.

(1) The citizen members of the county planning board shall be ~~resident-freeholders-in~~ residents of the area over which the planning board has jurisdiction.

(2) Any citizen appointee may be removed from office by a majority vote of the governing body of the governmental unit represented by such appointee."

Section 4. Section 76-1-221, MCA, is amended to read:

"76-1-221. Membership of city planning board. (1) A city planning board shall consist of not less than seven members to be appointed as follows:

(a) one member to be appointed by the city council from its membership;

(b) one member to be appointed by the city council, who may in the discretion of the city council be an employee or hold public office in the city or county in which the city is located;

(c) one member to be appointed by the mayor upon the designation by the county commissioners of the county in which the city is located;

(d) four citizen members to be appointed by the mayor, two of whom shall be resident-freeholders-~~within~~ residents

of the urban area, if any, outside of the city limits over which the planning board has jurisdiction under this chapter and two of whom shall be ~~resident-freeholders~~ residents within the city limits.

(2) The clerk of the city council shall certify members appointed by its body. The certificates shall be sent to and become a part of the records of the planning board. The mayor shall make similar certification for the appointment of citizen members."

Section 5. Section 76-1-223, MCA, is amended to read:

"76-1-223. County representative for city planning board. As soon as a city council has enacted an ordinance creating a city planning board, the board of county commissioners of the county wherein the city is located shall within 45 days designate a representative of the county to the mayor of the city for appointment of to the city planning board. This representative may be a member of the board of county commissioners or an officerholder or employee of the county. In the event of the failure of the county to so designate such member, the mayor may appoint a person of his own choosing and at his sole discretion as a representative of the county."

Section 6. Section 76-1-224, MCA, is amended to read:

"76-1-224. Citizen members of city planning board. (1) The citizen members shall:

1 (a) be qualified by knowledge and experience in
2 matters pertaining to the development of the city; and

3 (b) hold no other office in the city government; and

4 ~~(c) be resident freeholders of such city or~~
5 ~~jurisdictional areas defined in 76-1-504 through 76-1-507.~~

6 (2) Any citizen appointee may be removed from office
7 by a majority vote of the governing body of the government;
8 ~~unit represented by such appointee city."~~

9 Section 7. Section 76-1-403, MCA, is amended to read:

10 "76-1-403. Tax levy by county for certain county
11 planning districts authorized. When a county planning board
12 has been established, the board of county commissioners may
13 create a planning district which shall include that property
14 which lies outside the limits of the jurisdictional area as
15 established pursuant to 76-1-504 through 76-1-507 or as
16 modified pursuant to 76-1-501 through 76-1-503 in counties
17 where a city-county planning board has been established as
18 well as that property which lies outside the limits of any
19 incorporated cities and towns. The board of county
20 commissioners may levy on all property located within such
21 planning district a tax not to exceed 2-mills ~~the maximum~~
22 ~~levy authorized by 76-1-405~~ for planning board purposes;
23 under procedures set forth in Title 7, chapter 6, part 23."

24 Section 8. Section 76-1-406, MCA, is amended to read:

25 "76-1-406. Tax levy by municipalities authorized. The

1 governing body of any city or town represented upon a
2 planning board may levy a tax upon the property located
3 within such city or town not-to-exceed-2-mills for planning
4 board purposes, under procedures set forth in Title 7,
5 chapter 6, part 42, provided such tax shall not exceed the
6 maximum levy authorized in 76-1-407."

7 Section 9. Section 76-1-409, MCA, is amended to read:

8 "76-1-409. Acceptance and administration of government
9 funds and services. Upon approval of the governing bodies
10 represented on the board, a planning board may accept,
11 receive, and expend funds, grants, and services from the
12 federal government or its agencies and instrumentalities,
13 ~~from~~ of state or local government--or--its ~~governments~~ or
14 ~~their~~ agencies and instrumentalities, of--state--or--local
15 government or from civic sources; ~~may~~ and contract with
16 respect thereto; and ~~may~~ provide such information and
17 reports as may be necessary to secure such financial aid."

18 Section 10. Section 76-2-211, MCA, is amended to read:

19 "76-2-211. Violations and penalties. A violation of
20 this party--except--76-2-206, or any resolution adopted
21 pursuant thereto is hereby ~~declared to be~~ a misdemeanor and
22 shall be punishable by a fine not exceeding \$500 or
23 imprisonment in the county jail not exceeding 6 months or
24 both."

25 Section 11. Section 76-2-308, MCA, is amended to read:

"76-2-308. Enforcement of zoning regulations and ordinances. (1) The city or town council or other legislative body may provide by ordinance for the enforcement of this part--except--76-2-306, and of any regulation or ordinance made thereunder.

(2) In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used in violation of this part or of any ordinance or other regulation made under authority conferred hereby, the proper local authorities of the municipality, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; to restrain, correct, or abate such violation; to prevent the occupancy of such building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about such premises."

Section 12. Section 76-2-315, MCA, is amended to read:

"76-2-315. Violations and penalties. (1) A violation of this part--except--76-2-306, or of such ordinance or regulation made pursuant to 76-2-308(1) is hereby--declared to--be a misdemeanor, and such city or town council or other legislative body may provide for the punishment thereof by fine or imprisonment or both.

(2) It is also empowered to provide civil penalties for such violation."

Section 13. Section 76-3-202, MCA, is amended to read:

"76-3-202. Exemption for structures on complying subdivided lands. Where required by this chapter, ~~when~~ the land upon which an improvement is situated has been subdivided in compliance with this chapter, the sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land and is not subject to the terms of this chapter."

Section 14. Section 76-3-405, MCA, is amended to read:

"76-3-405. Administration of oaths by registered land surveyor. (1) Every registered land surveyor may administer and certify oaths when:

(a) it becomes necessary to take testimony for the identification of old corners or reestablishment of lost or obliterated corners;

(b) a corner or monument is found in a deteriorating condition and it is desirable that evidence concerning it be perpetuated;

(c) the importance of the survey makes it desirable to administer an oath to his assistants for the faithful performance of their duty.

(2) A record of oaths shall be preserved as part of

1 the field notes of the survey and noted on the certificate
2 of survey filed under this section ~~76-3-404.~~"

3 Section 15. Section 76-4-1115, MCA, is amended to
4 read:

5 "76-4-1115. Misdemeanors enumerated. The following
6 acts are misdemeanors:

7 (1) the willful violation of or failure to comply with
8 any of the provisions of this part;

9 (2) the willful violation, failure, omission, or
10 neglect to obey, observe, or comply with any order, permit,
11 decision, demand, or requirement of the board;

12 (3) the offering for sale or lease as an agent,
13 salesman, or broker for a subdivider, developer, or owner of
14 subdivided lands or a subdivision, wherever situated, which
15 is being offered for sale outside the state of Montana
16 without first complying with the provisions of this part;

17 ~~(4) the advertising for sale or lease in this state of~~
18 ~~a parcel in an out-of-state subdivision or in any other~~
19 ~~manner aiding an owner, subdivider, or developer of an~~
20 ~~out-of-state subdivision who has not complied with the~~
21 ~~provisions of this part to offer within this state~~
22 ~~subdivided lands."~~

23 Section 16. Section 76-4-1117, MCA, is amended to
24 read:

25 "76-4-1117. Accrual of cause of action. (1) For the

1 purpose of calculating the period of any applicable statute
2 of limitations in any action or proceeding, either civil or
3 criminal, involving any violation of this part, the cause of
4 action shall be deemed ~~considred~~ to have accrued not
5 earlier than the time of recording with the county clerk and
6 recorder of the county in which the property ~~was~~ sold or
7 leased in violation of this part, and which ~~recording~~
8 describes a lot or parcel so wrongfully sold or leased.

9 (2) This section does not prohibit the maintenance of
10 such action at any time during the recording of such
11 instruments."

12 Section 17. Section 76-4-1245, MCA, is amended to
13 read:

14 "76-4-1245. Penalties. Any person who violates any
15 provision of this part or who willfully violates any rule
16 adopted under it or any person who willfully in an
17 application for registration makes any untrue statement of a
18 material fact or omits to state a material fact ~~is guilty of~~
19 ~~a felony~~ and may be fined not less than \$1,000 or more than
20 \$5,000 or may be imprisoned for not more than 2 years, or
21 both."

22 Section 18. Section 76-5-1117, MCA, is amended to
23 read:

24 "76-5-1117. Bonds authorized -- procedure. Cities,
25 towns, and counties are hereby authorized to contract

1 indebtedness and to issue special improvement district or
2 rural improvement district bonds to provide funds for the
3 payment of the cost of improvements contemplated by this
4 part by following the following procedures:

5 (1) The governing body of the city, town, or county
6 may call a special election to vote upon the proposition of
7 issuing said bonds or may submit the proposition as a
8 special question at a regular municipal or general election.

9 (2) The notice of the election and the election itself
10 shall be carried out in accordance with ~~title 7, chapter 12,~~
11 ~~parts 41 and 42~~ 7-7-4221 through 7-7-4234 as to cities and
12 in accordance with ~~title 7, chapter 12, part 21~~ 7-7-2229
13 through 7-7-2238 as to the counties.

14 (3) Tax assessments for the payment of said ~~the~~ bonds
15 shall be levied in accordance with Title 7, chapter 12,
16 parts 41 and 42, and Title 7, chapter 12, part 21 as to
17 cities and counties, respectively."

18 Section 19. Section 76-6-203, MCA, is amended to read:

19 "76-6-203. Types of permissible easements. ~~(1)~~
20 Easements or restrictions under this chapter may prohibit or
21 limit any or all of the following:

22 ~~(1)~~ (1) structures--construction or placing of
23 buildings, camping trailers, housetrailer, mobile homes,
24 roads, signs, billboards or other advertising, utilities, or
25 other structures on or above the ground;

1 ~~(2)~~ (2) landfill--dumping or placing of soil or other
2 substance or material as landfill or dumping or placing of
3 trash, waste, or unsightly or offensive materials;

4 ~~(3)~~ (3) vegetation--removal or destruction of trees,
5 shrubs, or other vegetation;

6 ~~(4)~~ (4) loam, gravel, etc.--excavation, dredging, or
7 removal of loam, peat, gravel, soil, rock, or other material
8 substance;

9 ~~(5)~~ (5) surface use--surface use except for such
10 purposes permitting the land or water area to remain
11 predominantly in its existing condition;

12 ~~(6)~~ (6) acts detrimental to conservation--activities
13 detrimental to drainage, flood control, water conservation,
14 erosion control, soil conservation, or fish and wildlife
15 habitat and preservation;

16 ~~(7)~~ (7) subdivision of land--subdivision of land as
17 defined in 76-3-103, 76-3-104, and 76-3-202;

18 ~~(8)~~ (8) other acts--other acts or uses detrimental to
19 such retention of land or water areas in their existing
20 conditions.

21 ~~(2) The term "land" in subsections (1) and (11)~~
22 ~~above includes land under water, water, and water surfaces."~~

23 Section 20. Section 76-15-311, MCA, is amended to
24 read:

25 "76-15-311. Governing body of district. (1) If there

are no incorporated municipalities within the boundaries of the district, the governing body of ~~and the~~ district shall consist of five or seven supervisors elected ~~supervisors or appointed as provided herein.~~

(2) If there are incorporated municipalities within the boundaries of the district, the governing body of the district shall consist of seven supervisors as follows:

~~(2)(a) In all cases where the boundaries of such conservation district include any incorporated municipality or municipalities, the~~ The board of supervisors, in addition to the five elected supervisors, shall consist of two appointed supervisors, making a total of seven supervisors in such districts. The two appointed supervisors must be residents of the municipalities within the district. The legislative bodies of the incorporated municipalities within the district shall appoint the two additional supervisors after consultation with the elected supervisors. The term of office of the appointed supervisors shall be 3 years.

~~(3)(b) Where there are more than two incorporated municipalities within a district, the two appointed supervisors shall represent all the municipalities and urban interests in the district and no municipality shall have more than one appointed supervisor residing therein."~~

Section 21. Section 76-15-321, MCA, is amended to read:

"76-15-321. Rulemaking authority. A conservation district and the supervisors thereof shall have the power to make and from time to time amend and repeal rules ~~not consistent with this chapter~~ to carry into effect ~~its~~ the purposes and powers ~~of this chapter."~~

Section 22. Section 76-15-528, MCA, is amended to read:

"76-15-528. Lien for special assessments. Any special assessment made and levied to defray the cost and expenses of any of the work enumerated in this chapter, together with any percentages imposed for delinquency and for cost of collection, shall constitute a lien against the property upon which such assessment is levied, ~~after from~~ the date ~~levying on which~~ such assessment, ~~which is levied, this~~ lien can only be extinguished by payment of such assessment with all penalties, costs, and interest."

Section 23. Section 76-15-611, MCA, is amended to read:

"76-15-611. Federal authority unaffected. (1) The provisions of this ~~section shall not~~ ~~part do~~ not apply to the government of the United States or any department, bureau, or agency thereof, except to such extent as the government of the United States or any department, bureau, or agency thereof may desire to take advantage of its provisions, ~~it being the~~ ~~it is an~~ express purpose and intent of this

section ~~part~~ to aid but not to interfere with the government of the United States or of any department, bureau, or agency thereof in any undertaking over which such federal authority desires to exercise full supervision and control.

(2) The provisions of this ~~section-shall~~ ~~part may~~ not be construed to impair, limit, or repeal any right whatsoever which the government of the United States or any department, bureau, or agency thereof has to full and complete jurisdiction, management, or control over projects over which such federal authority desires to exercise such rights. ~~It being the purpose of this section part~~ expressly to subordinate any power of jurisdiction and to never interfere directly with such federal authority."

Section 24. Section 76-15-722, MCA, is amended to read:

"76-15-722. Operation of board of adjustment. (1) The board of adjustment shall adopt rules to govern its procedures, which rules shall be in accordance with this chapter and with any ~~the~~ ordinance adopted--pursuant--to 76-15-721---through--76-15-727 establishing the board of adjustment.

(2) The board shall annually elect a chairman from among its members. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Any two members of the board constitute

a quorum. The chairman or in his absence such other member of the board as he may designate to serve as acting chairman may administer oaths and compel the attendance of witnesses.

(3) All meetings of the board shall be open to the public. The board shall keep a full and accurate record of all proceedings, of all documents filed with it, and of all orders entered, which shall be filed in the office of the board and shall be a public record."

Section 25. Section 76-15-725, MCA, is amended to read:

"76-15-725. Board decision. (1) If, upon the facts presented at the hearing, the board determines that there are great practical difficulties or unnecessary hardship in the way of applying the strict letter of any of the land use regulations upon the lands of the petitioner, it shall make and record that determination and shall make and record findings of fact as to the specific conditions which establish the great practical difficulties or unnecessary hardship.

(2) Upon the basis of the findings and determination, the board may order a variance from the terms of the land use regulations in their application to the lands of the petitioner that will relieve the great practical difficulties or unnecessary hardship, and will not be contrary to the public interest, and will be such that the

spirit of the land use regulations is observed, the public health, safety, and welfare is secured, and substantial justice is done."

Section 26. Section 76-16-306, MCA, is amended to read:

"76-16-306. Management of grazing lands. A state district may:

(1) manage and control the use of its range and agricultural lands acquired under 76-16-305(2). This power includes the right to determine the size of preferences and permit according to a fixed method which shall be stated in the bylaws and which shall take into consideration the rating of dependent commensurate property and the carrying capacity of the range and may be subject to reservations, regulations, and limitations under the terms of agreements between the state district and any agency of the United States. The state district may also allot range to members or nonmembers and decrease or increase the size of permits if the range carrying capacity changes.

(2) undertake reseeding and other approved conservation and improvement practices of depleted range areas or ~~abandon~~ abandoned farm lands and enter into cooperative agreements with the federal government or any other person for the reseeding or conservation and improvement practices;

(3) employ and discharge employees, riders, and other persons necessary to properly manage the state district."

Section 27. Section 76-16-406, MCA, is amended to read:

"76-16-406. Transfer of preferences. (1) Upon application by a permittee, the state district with the approval of the department may allow a preference based on ownership or control of dependent commensurate or commensurate property to be transferred to other property of sufficient commensurability; however, in any transfer of preference from dependent commensurate or commensurate property controlled but not owned by the applicant, the applicant must have had control and use of the dependent commensurate or commensurate property and the preference appurtenant thereto for 5 consecutive years and must have established and maintained the livestock operation upon which the dependency was established by use or priority immediately prior to the application for transfer.

(2) In addition, the transfer may not interfere with the stability of livestock operations or with proper range management and may not affect adversely the established local economy. A transfer may not be allowed without the written consent of the owner or owners ~~and any encumbrances~~ of the dependent commensurate or commensurate property from which the transfer is to be made and a the owner or owners

1 ~~of any encumbrances on the property.~~ A transfer is not
2 effective until approved by the department.

3 (3) All expenses involved under the application shall
4 be borne by the applicant."

-End-

January 17, 1979

The House Natural Resources Committee convened in Room 3, of the Capital Annex, on Wednesday, January 17, 1979, at 1:30 p.m., with Vice Chairman Hal Harper presiding and sixteen members present (excused were Chairman Sheldon and Representative Huennekens and absent was Representative Quilici). Vice Chairman Harper opened the meeting to a hearing on HB 48 and HB 130.

HOUSE BILL 48

REPRESENTATIVE REX MANUEL, the chief sponsor, introduced the bill. He said the bill was being introduced at the request of the code commissioner. Rep. Manuel asked Larry Weinberg of the Legislative Council to explain the bill in more detail.

LARRY WEINBERG, Legislative Council, said in the process of updating the code books they came across many needed small changes which might be grammatical, sometimes inconsistencies with other parts, sometimes unnecessary redundancy, sometimes needed clarification; and, if they were nervous about making any of these changes, a recod bill was born and brought to the lawmakers and this is one of those. He went through the bill section by section explaining the changes and why. At the end he pointed out the green pages attached which also explain the changes. He said he didn't believe any substantive changes had been made in the law.

Questions were asked by the committee. Mr. Weinberger responded to one question that penalty had been changed to misdemeanor to make it consistent with the criminal law--the penalty was not changed.

Dan Mizner, Montana League of Counties, signed as supporting the bill.

HOUSE BILL 130

REPRESENTATIVE JACK RAMIREZ, the chief sponsor, said this bill was to designate a jurisdictional agency to make determinations needed for the state to qualify under the federal Natural Gas Policy Act of 1978. He said this act permits wells drilled after 1977 to charge higher prices for their gas. He said this bill would designate the Board of Oil and Gas Conservation as the agency to determine which wells qualify and to implement the rules. He said if the state agency is set up and operating by March 1, the higher gas prices would be retroactive to December, 1978, and so it is important to the qualifying well drillers that we act quickly. He said this should not affect Montana consumers as most of the gas we purchase is already contracted. He said there would be lots of benefits to the state: increased revenue from state oil leases, increased tax revenue, and Montanans that have oil leases will gain and pay additional income taxes to the state. He said there is a suggested amendment and he called on Larry Weinberg to explain the amendment.

glut of gas, all of this because of the changing over to oil, coal, etc. Rep. Fagg also mentioned a problem they had in Billings where MDU was unable to connect a party that desired natural gas. Mr. Moore said this was due to bureaucratic bungling in Washington and there were restrictions that should no longer be as MDU now has access to sufficient natural gas.

Signing as favoring the bill were:

Dave Goss, Billings

David W. Woodgerd, Board of Oil and Gas Conservation

Vice Chairman Harper closed the hearing on the bills and opened the meeting to an executive session on these bills.

EXECUTIVE SESSION

HOUSE BILL 48 Rep. Fagg moved do pass. Rep. Scully said he did not like the removal of the "freeholder" concept. He said he was firmly convinced that there are places where it is proper to have a freeholder concept. He said where you are involved with planning it is not unreasonable that you have owners of the property on the board. He moved that all references to freeholder be reinserted. Rep. Thoft spoke his support for this also. Mr. Weinberg said where voting rights are concerned the federal courts have said it must be open to all residents; petitions can be restricted to just freeholders. He said where the burdens and benefits go to the land then it is a reasonable classification to go to the freeholder. If the burdens and benefits go to both freeholder and nonfreeholder they will strike down the freeholder concept, and anyone in an area would have a stake in a planning board's decision. But he said this is the committee's decision. He said it could result in a court challenge. He said to replace the freeholder concept they should strike sections 2, 3, and 4 of the bill. Rep. Scully moved a substitute motion to do this--to delete sections 2, 3 and 4 in order to reinsert the freeholder concept. The motion passed with Reps. Kessler, Cooney, Metcalf and McBride voting no. Rep. Fagg then moved the bill do pass as amended. The motion passed unanimously with those present (absent were Huennekens, Quillici and Shelden). Rep. Nathe moved the bill be placed on the consent calendar. Rep. Harper voted no so this motion failed. HB 48 received a committee DO PASS AS AMENDED.

HOUSE BILL 130 Rep. Johnston moved do pass as amended (using the two suggested Legislative Council amendments). Motion passed unanimously. Rep. Cooney moved that the bill be placed on the consent calendar. This motion passed unanimously. (Absent the same as above). HB 130 will be placed on the consent calendar with a DO PASS AS AMENDED.

Meeting adjourned at 2:35 p.m.

Respectfully submitted,

MINUTES OF THE MEETING
LOCAL GOVERNMENT COMMITTEE
MONTANA STATE SENATE

March 1, 1979

The meeting of the Local Government Committee was called to order by Chairman George McCallum at 1:00 p.m. in Room 405 of the State Capitol Building.

ROLL CALL: All members were present.

Dennis Taylor, staff researcher, was also present.

Visitors in attendance signed the testimony and visitor sheets. (See attachment.)

CONSIDERATION OF HOUSE BILL 104: Representative Robert Pavlovich, of District 86, sponsor of House Bill 104, gave a brief resume of the bill. This bill is an act to generally revise the state fire laws to conform them to the adaption of the uniform building code. This bill was requested by the Attorney General. Representative Pavlovich explained the letter of intent.

Mike McGrath, of the Attorney General's office, stated that this bill would bring the fire marshall codes into uniformity under our code bill. Mr. McGrath stated his views of the bill.

Bob Kelly, State Fire Marshall, stated there has been many conflicts in the codes. This will clean up legislation that is in conflict with the fire codes.

Les Nelson, representing the Montana State Fireman's Association, stated that he felt that this was a good piece of legislation.

With no further proponents, Senator McCallum called on the opponents, hearing none the meeting was opened to a question and answer period from the Committee. Discussion was held.

CONSIDERATION OF HOUSE BILL 48: Representative Rex Manuel, of District 11, is the sponsor of House Bill 48. This bill is a code commissioner bill to revise and clarify the laws relating to land resources use. In the absence of Representative Manuel, Larry Weinburger, from the Legislative Council, explained the bill. Section one adds the county planning board. Sections two and three and four were deleted by the House as having to do with resident and freeholder requirements. Other changes were made for clarity, consistency and to remove redundant material.

Senator Bill Mathers, of District 26, spoke in favor of the bill, however, he did offer amendments which he felt would only improve the bill. The amendments that Senator Mathers offered

would take care of the sale of bonds regarding a flood dike in Miles City and Custer County. Miles City will lose its federal grant if this problem, covered by the amendments, is not taken care of within a short time.

Bruce MacKenzie, council for D. A. Davidson, reported that bonds are issued by the people of the flood district without an election. Mr. MacKenzie stated that there has never been a default on a S.I.D. for more than forty or fifty years.

Richard Larsen, a bonding attorney from the Attorney General's office, told a brief history of the original laws. It was first amended in 1971. Mr. Larsen stated that the amendments would allow S.I.D.'s to be used in the fund. It is a good bill as amended.

With no further proponents, Senator McCallum called on the opponents, hearing none the meeting was opened to a question and answer period from the Committee. Discussion was held.

Senator Watt asked about the money in the revolving fund. Mr. MacKenzie replied that the money would go into the general fund of the city.

Senator Story asked if this is a general obligation bond. Mr. MacKenzie replied "no".

Senator Story asked if this is a conservation district. He was answered that it is not.

Senator Mathers stated that if he had enough time he would have introduced a bill which would have taken care of this problem.

DISPOSITION OF HOUSE BILL 48: A motion was made by Senator Watt to accept the proposed amendments. Motion carried.

A motion was made by Senator Watt that HB 48 "BE CONCURRED IN, as amended". Motion carried unanimously.

Larry Weinburger stated that he would take no stand on the amendments as they make a substantial change.

CONSIDERATION OF HOUSE BILL 683: Representative Andrea Hemstad, of District 40, sponsor of the bill, gave a brief resume. This bill is an act to eliminate the requirement of certain county financial reports to the State Auditor concerning receipt and disposition of fees by county officials and the requirement that the State Auditor publish such reports. Miss Hemstad stated that this bill repeals two sections of the law. This procedure is already being done by computer and it is not necessary to duplicate it.

There were neither any proponents nor opponents of the bill.

Roll *FRONT 1*

ROLL CALL

LOCAL GOVERNMENT COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
GEORGE MCCALLUM, CHAIRMAN	✓		
LLOYD LOCKREN, VICE CHAIRMAN	✓		
MAX CONOVER	✓		
JESSE A. O'HARA	✓		
BOB PETERSON	✓		
A. T. (TOM) RASMUSSEN	✓		
PETE STORY	✓		
BILL THOMAS	✓		
ROBERT D. WATT	✓		

Each Day Attach to Minutes.

STANDING COMMITTEE REPORT

..... March 1 1979.
Journal

MR. President:.....

We, your committee on Local Government.....

having had under consideration House Bill No. 48.....

Respectfully report as follows: That..... House Bill No. 48.....

third reading bill, be amended as follows:

1. Title, line 5.
Following: "GENERALLY"
Insert: "AND SUBSTANTIVELY"

2. Title, line 6.
Following: "USE"
Insert: "; REVISING THE PROCEDURE TO ISSUE BONDS FOR WATER
CONSERVATION AND FLOOD CONTROL PROJECTS; PROVIDING AN EFFECTIVE DATE

3. Page 11, line 4.
Following: "the"
Strike: "following"
Following: "procedures"
Insert: "established for the issuance of such bonds under the
provisions of Title 7, chapter 12, part 42, as to cities and
towns and Title 7, chapter 12, part 21, as to counties. Payment
and security for the bonds shall be provided by following the
~~XXXXXX~~ following procedures"

..... (Continued)
Chairman.

4. Page 11, lines 5 through 13.

Strike: Lines 5 through 13 in their entirety

5. Page 11, line 14.

Following: line 13

Strike: "(3)"

Insert: "(1)"

6. Page 11, line 18.

Following: line 17

Insert: "(2) A revolving fund, to be pledged for the security of the bonds, must be established pursuant to the provisions of Title 7, chapter 12, part 42, as to cities and towns, and Title 7, chapter 12, part 21, as to counties, by the governing body authorizing the issuance of the bonds."

7. Page 19, line 5.

Following: line 4

Insert: "Section 28. Effective date. This act is effective on passage and approval."

NAME: Deane F. Al / Mac Kewell DATE: 5/1

ADDRESS: 16 Third St. No.

PHONE: 121-4206

REPRESENTING WHOM? DA Grubbs

APPEARING ON WHICH PROPOSAL: HB 48

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Richard Lincoln DATE: 1/24/68

ADDRESS: Attorney General's Office

PHONE: 440-5553

REPRESENTING WHOM? Attorney General

APPEARING ON WHICH PROPOSAL: A.R. 28

DO YOU: SUPPORT? / AMEND? OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

HOUSE BILL NO. 48

INTRODUCED BY MANUEL

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY AND
SUBSTANTIALLY REVISE AND CLARIFY THE LAWS RELATING TO LAND
RESOURCES AND USE; ~~REVISING THE PROCEDURE TO ISSUE BONDS FOR~~
~~WATER CONSERVATION AND FLOOD CONTROL PROJECTS; PROVIDING AN~~
~~EFFECTIVE DATE.~~"

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 76-1-103, MCA, is amended to read:

"76-1-103. Definitions. As used in this chapter, the
following definitions apply:

(1) "City" includes incorporated cities and towns.

(2) "City council" means the chief legislative body of
a city or incorporated town.

(3) "Governing body" or "governing bodies" means the
governing body of any governmental unit represented on a
planning board.

(4) "Master plan" means a comprehensive development
plan or any of its parts such as a plan of land use and
zoning, of thoroughfares, of sanitation, of recreation, and
of other related matters.

(5) "Mayor" means mayor of a city.

(6) "Person" means any individual, firm, or
corporation.

(7) "Planning board" means a city planning board, a
county planning board or a joint city-county planning board.

(8) "Plat" means a subdivision of land into lots,
streets, and areas, marked upon the earth and represented on
paper, and includes ~~re-plats~~ replats or amended plats.

(9) "Public place" means any tract owned by the state
or its subdivisions.

(10) "Streets" includes streets, avenues, boulevards,
roads, lanes, alleys, and all public ways.

(11) "Units of government" means any federal, state, or
regionally unit of government or any county, city, or town.

(12) "Utility" means any facility used in rendering
service which the public has a right to demand."

~~Section 2. Section 76-1-202, MCA, is amended to read:~~
~~"76-1-202. Qualifications of citizen members of~~
~~city-county planning boards. (1) The citizen members of the~~
~~city-county planning board shall be resident freeholders in~~
~~residents of the area over which the planning board has~~
~~jurisdiction provided, however, that at least two of such~~
~~members shall be resident freeholders in residents of the~~
~~area, if any, outside the city limits over which the~~
~~planning board has jurisdiction and the two members~~
~~appointed by the county commissioners shall reside outside~~

1 the city limits but within the jurisdictional area of the
2 planning boards.

3 (2) Any citizen appointee may be removed from office
4 by a majority vote of the governing body of the governmental
5 unit represented by such appointees."

6 Section 3. Section 76-1-212, MCA, is amended to read:
7 "76-1-212. Citizen members of county planning boards
8 (1) The citizen members of the county planning board shall
9 be resident freeholders in residents of the area over which
10 the planning board has jurisdiction.

11 (2) Any citizen appointee may be removed from office
12 by a majority vote of the governing body of the governmental
13 unit represented by such appointees."

14 Section 4. Section 76-1-221, MCA, is amended to read:
15 "76-1-221. Membership of city planning boards. (1) A
16 city planning board shall consist of not less than seven
17 members to be appointed as follows:

18 (a) one member to be appointed by the city council
19 from its membership;

20 (b) one member to be appointed by the city council
21 who may in the discretion of the city council be an employee
22 or hold public office in the city or county in which the
23 city is located;

24 (c) one member to be appointed by the mayor upon the
25 designation by the county commissioners of the county in

1 which the city is located;

2 (d) four citizen members to be appointed by the mayor,
3 two of whom shall be resident freeholders within residents
4 of the urban area if any outside of the city limits over
5 which the planning board has jurisdiction under this chapter
6 and two of whom shall be resident freeholders residents
7 within the city limits.

8 (2) The clerk of the city council shall certify
9 members appointed by its body. The certificates shall be
10 sent to and become a part of the records of the planning
11 boards. The mayor shall make similar certification for the
12 appointment of citizen members."

13 Section 2. Section 76-1-223, MCA, is amended to read:
14 "76-1-223. County representative for city planning
15 board. As soon as a city council has enacted an ordinance
16 creating a city planning board, the board of county
17 commissioners of the county wherein the city is located
18 shall within 45 days designate a representative of the
19 county to the mayor of the city for appointment of to the
20 city planning board. This representative may be a member of
21 the board of county commissioners or an officeholder or
22 employee of the county. In the event of the failure of the
23 county to so designate such member, the mayor may appoint a
24 person of his own choosing and at his sole discretion as a
25 representative of the county."

Section 3. Section 76-1-224, MCA, is amended to read:

"76-1-224. Citizen members of city planning board. (1)

The citizen members shall:

(a) be qualified by knowledge and experience in matters pertaining to the development of the city; and

(b) hold no other office in the city government; and

(c) ~~be resident freeholders of such city or jurisdictional area as defined in 76-1-504 through 76-1-507.~~

(2) Any citizen appointee may be removed from office by a majority vote of the governing body of the government ~~unit represented by such appointee city.~~

Section 4. Section 76-1-403, MCA, is amended to read:

"76-1-403. Tax levy by county for certain county planning districts authorized. When a county planning board has been established, the board of county commissioners may create a planning district which shall include that property which lies outside the limits of the jurisdictional area as established pursuant to 76-1-504 through 76-1-507 or as modified pursuant to 76-1-501 through 76-1-503 in counties where a city-county planning board has been established as well as that property which lies outside the limits of any incorporated cities and towns. The board of county commissioners may levy on all property located within such planning district a tax not to exceed ~~2-mills the maximum~~ levy authorized by 76-1-405 for planning board purposes;

under procedures set forth in Title 7, chapter 6, part 23."

Section 5. Section 76-1-406, MCA, is amended to read:

"76-1-406. Tax levy by municipalities authorized. The governing body of any city or town represented upon a planning board may levy a tax upon the property located within such city or town ~~not to exceed 2-mills~~ for planning board purposes, under procedures set forth in Title 7, chapter 6, part 42, provided such tax shall not exceed the maximum levy authorized in 76-1-407."

Section 6. Section 76-1-409, MCA, is amended to read:

"76-1-409. Acceptance and administration of government funds and services. Upon approval of the governing bodies represented on the board, a planning board may accept, receive, and expend funds, grants, and services from the federal government or its agencies and instrumentalities, ~~from~~ of state or local government ~~or its governments or~~ their agencies and instrumentalities, ~~of state or local~~ government or from civic sources; ~~may~~ and contract with respect thereto; and ~~may~~ provide such information and reports as may be necessary to secure such financial aid."

Section 7. Section 76-2-211, MCA, is amended to read:

"76-2-211. Violations and penalties. A violation of this part ~~except 76-2-206~~ or any resolution adopted pursuant thereto is ~~hereby declared to be~~ a misdemeanor and shall be punishable by a fine not exceeding \$500 or

1 imprisonment in the county jail not exceeding 6 months or
2 both."

3 Section 8. Section 76-2-308, MCA, is amended to read:

4 "76-2-308. Enforcement of zoning regulations and
5 ordinances. (1) The city or town council or other
6 legislative body may provide by ordinance for the
7 enforcement of this part, ~~except 76-2-306~~ and of any
8 regulation or ordinance made thereunder.

9 (2) In case any building or structure is erected,
10 constructed, reconstructed, altered, repaired, converted, or
11 maintained or any building, structure, or land is used in
12 violation of this part or of any ordinance or other
13 regulation made under authority conferred hereby, the proper
14 local authorities of the municipality, in addition to other
15 remedies, may institute any appropriate action or
16 proceedings to prevent such unlawful erection, construction,
17 reconstruction, alteration, repair, conversion, maintenance,
18 or use; to restrain, correct, or abate such violation; to
19 prevent the occupancy of such building, structure, or land;
20 or to prevent any illegal act, conduct, business, or use in
21 or about such premises."

22 Section 9. Section 76-2-315, MCA, is amended to read:

23 "76-2-315. Violations and penalties. (1) A violation
24 of this part, ~~except 76-2-306~~ or of such ordinance or
25 regulation made pursuant to 76-2-308(1) is hereby declared

1 to-be a misdemeanor, and such city or town council or other
2 legislative body may provide for the punishment thereof by
3 fine or imprisonment or both.

4 (2) It is also empowered to provide civil penalties
5 for such violation."

6 Section 10. Section 76-3-202, MCA, is amended to read:

7 "76-3-202. Exemption for structures on complying
8 subdivided lands. Where required by this chapter, ~~when~~ the
9 land upon which an improvement is situated has been
10 subdivided in compliance with this chapter, the sale, rent,
11 lease, or other conveyance of one or more parts of a
12 building, structure, or other improvement situated on one or
13 more parcels of land is not a division of land and is not
14 subject to the terms of this chapter."

15 Section 11. Section 76-3-405, MCA, is amended to read:

16 "76-3-405. Administration of oaths by registered land
17 surveyor. (1) Every registered land surveyor may administer
18 and certify oaths when:

19 (a) it becomes necessary to take testimony for the
20 identification of old corners or reestablishment of lost or
21 obliterated corners;

22 (b) a corner or monument is found in a deteriorating
23 condition and it is desirable that evidence concerning it be
24 perpetuated;

25 (c) the importance of the survey makes it desirable to

1 administer an oath to his assistants for the faithful
2 performance of their duty.

3 (2) A record of oaths shall be preserved as part of
4 the field notes of the survey and noted on the certificate
5 of survey filed under ~~this-section 76-3-404.~~"

6 Section 12. Section 76-4-1115, MCA, is amended to
7 read:

8 "76-4-1115. Misdemeanors enumerated. The following
9 acts are misdemeanors:

10 (1) the willful violation of or failure to comply with
11 any of the provisions of this part;

12 (2) the willful violation, failure, omission, or
13 neglect to obey, observe, or comply with any order, permit,
14 decision, demand, or requirement of the board;

15 (3) the offering for sale or lease as an agent,
16 salesman, or broker for a subdivider, developer, or owner of
17 subdivided lands or a subdivision, wherever situated, which
18 is being offered for sale outside the state of Montana
19 without first complying with the provisions of this part;

20 ~~{4}--the-advertising-for-sale-or-lease-in-this-state-of~~
21 ~~a-parcel-in-an-out-of-state--subdivision--or--in--any--other~~
22 ~~manner--aiding--an--owner--subdivider--or--developer-of-an~~
23 ~~out-of-state-subdivision--who--has--not--complied--with--the~~
24 ~~provisions--of--this--part--to--offer--within--this--state~~
25 ~~subdivided-lands."~~

1 Section 13. Section 76-4-1117, MCA, is amended to
2 read:

3 "76-4-1117. Accrual of cause of action. (1) For the
4 purpose of calculating the period of any applicable statute
5 of limitations in any action or proceeding, either civil or
6 criminal, involving any violation of this part, the cause of
7 action shall be deemed ~~considered~~ to have accrued not
8 earlier than the time of recording with the county clerk and
9 recorder of the county in which the property ~~was~~ sold or
10 leased in violation of this part, ~~and which recording~~
11 describes a lot or parcel so wrongfully sold or leased.

12 (2) This section does not prohibit the maintenance of
13 such action at any time during the recording of such
14 instruments."

15 Section 14. Section 76-4-1245, MCA, is amended to
16 read:

17 "76-4-1245. Penalties. Any person who violates any
18 provision of this part or who willfully violates any rule
19 adopted under it or any person who willfully in an
20 application for registration makes any untrue statement of a
21 material fact or omits to state a material fact ~~is-guilty-of~~
22 ~~a-felony-and~~ may be fined not less than \$1,000 or more than
23 \$5,000 or may be imprisoned for not more than 2 years, or
24 both."

25 Section 15. Section 76-5-1117, MCA, is amended to

1 read:

2 "76-5-1117. Bonds authorized -- procedure. Cities,
3 towns, and counties are hereby authorized to contract
4 indebtedness and to issue special improvement district or
5 rural improvement district bonds to provide funds for the
6 payment of the cost of improvements contemplated by this
7 part by following the following procedures ESTABLISHED FOR
8 THE ISSUANCE OF SUCH BONDS UNDER THE PROVISIONS OF TITLE 7,
9 CHAPTER 12, PART 42, AS TO CITIES AND TOWNS AND TITLE 7,
10 CHAPTER 12, PART 21, AS TO COUNTIES, PAYMENT AND SECURITY
11 FOR THE BONDS SHALL BE PROVIDED BY FOLLOWING THE FOLLOWING
12 PROCEDURES:

13 ~~{1}--The governing body of the city, town, or county~~
14 ~~may call a special election to vote upon the proposition of~~
15 ~~issuing said bonds or may submit the proposition as a~~
16 ~~special question at a regular municipal or general election.~~

17 ~~{2}--The notice of the election and the election itself~~
18 ~~shall be carried out in accordance with Title 7, chapter 12,~~
19 ~~parts 41 and 42, 7-7-2227 through 7-7-2234 as to cities and~~
20 ~~in accordance with Title 7, chapter 12, part 21, 7-7-2229~~
21 ~~through 7-7-2236 as to the counties.~~

22 {3}(1) Tax assessments for the payment of said bonds
23 bonds shall be levied in accordance with Title 7, chapter
24 12, parts 41 and 42, and Title 7, chapter 12, part 21 as to
25 cities and counties, respectively.

1 {2} A REVOLVING FUND, TO BE PLEDGED FOR THE SECURITY
2 OF THE BONDS, MUST BE ESTABLISHED PURSUANT TO THE PROVISIONS
3 OF TITLE 7, CHAPTER 12, PART 42, AS TO CITIES AND TOWNS, AND
4 TITLE 7, CHAPTER 12, PART 21, AS TO COUNTIES, BY THE
5 GOVERNING BODY AUTHORIZING THE ISSUANCE OF THE BONDS."

6 Section 16. Section 76-6-203, MCA, is amended to read:
7 "76-6-203. Types of permissible easements. {1}
8 Easements or restrictions under this chapter may prohibit or
9 limit any or all of the following:

10 {a}(1) structures--construction or placing of
11 buildings, camping trailers, house trailers, mobile homes,
12 roads, signs, billboards or other advertising, utilities, or
13 other structures on or above the ground;

14 {b}(2) landfill--dumping or placing of soil or other
15 substance or material as landfill or dumping or placing of
16 trash, waste, or unsightly or offensive materials;

17 {c}(3) vegetation--removal or destruction of trees,
18 shrubs, or other vegetation;

19 {d}(4) loam, gravel, etc.--excavation, dredging, or
20 removal of loam, peat, gravel, soil, rock, or other material
21 substance;

22 {e}(5) surface use--surface use except for such
23 purposes permitting the land or water area to remain
24 predominantly in its existing condition;

25 {f}(6) acts detrimental to conservation--activities

1 detrimental to drainage, flood control, water conservation,
2 erosion control, soil conservation, or fish and wildlife
3 habitat and preservation;

4 ~~(g)(7)~~ subdivision of land--subdivision of land as
5 defined in 76-3-103, 76-3-104, and 76-3-202;

6 ~~(h)(8)~~ other acts--other acts or uses detrimental to
7 such retention of land or water areas in their existing
8 conditions.

9 ~~(2)--The--term--"land"--in-subsections-(1)(b)-and-(1)(c)~~
10 ~~above--includes--land-under-water--water--end--water--surfaces"~~

11 Section 17. Section 76-15-311, MCA, is amended to
12 read:

13 "76-15-311. Governing body of district. (1) If there
14 are no incorporated municipalities within the boundaries of
15 the district, the governing body of ~~said the~~ district shall
16 consist of five ~~or-seven-supervisors~~ elected ~~supervisors~~ or
17 appointed ~~as-provided-herein~~.

18 ~~(2) If there are incorporated municipalities within~~
19 ~~the boundaries of the district, the governing body of the~~
20 ~~district shall consist of seven supervisors as follows:~~

21 ~~(2)(a) In all cases--where--the--boundaries--of--such~~
22 ~~conservation--district--include--any--incorporated--municipality~~
23 ~~or--municipalities--the~~ the board of supervisors, in addition
24 to the five elected supervisors, shall consist of two
25 appointed supervisors, making a total of seven supervisors

1 in such districts. The two appointed supervisors must be
2 residents of the municipalities within the district. The
3 legislative bodies of the incorporated municipalities within
4 the district shall appoint the two additional supervisors
5 after consultation with the elected supervisors. The term
6 of office of the appointed supervisors shall be 3 years.

7 ~~(3)(b)~~ Where there are more than two incorporated
8 municipalities within a district, the two appointed
9 supervisors shall represent all the municipalities and urban
10 interests in the district and no municipality shall have
11 more than one appointed supervisor residing therein."

12 Section 18. Section 76-15-321, MCA, is amended to
13 read:

14 "76-15-321. Rulemaking authority. A conservation
15 district and the supervisors thereof shall have the power to
16 make and from time to time amend and repeal rules ~~not~~
17 ~~consistent-with-this-chapter~~ to carry into effect ~~its the~~
18 purposes and powers ~~of this chapter~~."

19 Section 19. Section 76-15-528, MCA, is amended to
20 read:

21 "76-15-528. Lien for special assessments. Any special
22 assessment made and levied to defray the cost and expenses
23 of any of the work enumerated in this chapter, together with
24 any percentages imposed for delinquency and for cost of
25 collection, shall constitute a lien against the property

1 upon which such assessment is levied~~y-after from~~ the date
2 ~~levying on which~~ such assessment~~y-which is levied~~. This lien
3 can only be extinguished by payment of such assessment with
4 all penalties, costs, and interest."

5 Section 20. Section 76-15-611, MCA, is amended to
6 read:

7 "76-15-611. Federal authority unaffected. (1) The
8 provisions of this section~~-shall part do~~ not apply to the
9 government of the United States or any department, bureau,
10 or agency thereof, except to such extent as the government
11 of the United States or any department, bureau, or agency
12 thereof may desire to take advantage of its provisions~~y--it~~
13 ~~being--the~~. It is an express purpose and intent of this
14 section ~~part~~ to aid but not to interfere with the government
15 of the United States or of any department, bureau, or agency
16 thereof in any undertaking over which such federal authority
17 desires to exercise full supervision and control.

18 (2) The provisions of this section~~-shall part may~~ not
19 be construed to impair, limit, or repeal any right
20 whatsoever which the government of the United States or any
21 department, bureau, or agency thereof has to full and
22 complete jurisdiction, management, or control over projects
23 over which such federal authority desires to exercise such
24 rights~~y--it-being-the~~. It is a purpose of this section ~~part~~
25 expressly to subordinate any power of jurisdiction and to

1 never interfere directly with such federal authority."

2 Section 21. Section 76-15-722, MCA, is amended to
3 read:

4 "76-15-722. Operation of board of adjustment. (1) The
5 board of adjustment shall adopt rules to govern its
6 procedures, which rules shall be in accordance with this
7 chapter and with any ~~the~~ ordinance adopted~~--pursuant--to~~
8 ~~76-15-721---through--76-15-727~~ establishing the board of
9 adjustment.

10 (2) The board shall annually elect a chairman from
11 among its members. Meetings of the board shall be held at
12 the call of the chairman and at such other times as the
13 board may determine. Any two members of the board constitute
14 a quorum. The chairman or in his absence such other member
15 of the board as he may designate to serve as acting chairman
16 may administer oaths and compel the attendance of witnesses.

17 (3) All meetings of the board shall be open to the
18 public. The board shall keep a full and accurate record of
19 all proceedings, of all documents filed with it, and of all
20 orders entered, which shall be filed in the office of the
21 board and shall be a public record."

22 Section 22. Section 76-15-725, MCA, is amended to
23 read:

24 "76-15-725. Board decision. (1) If, upon the facts
25 presented at the hearing, the board determines that there

1 are great practical difficulties or unnecessary hardship in
2 the way of applying the strict letter of any of the land use
3 regulations upon the lands of the petitioner, it shall make
4 and record that determination and shall make and record
5 findings of fact as to the specific conditions which
6 establish the great practical difficulties or unnecessary
7 hardship.

8 (2) Upon the basis of the findings and determination,
9 the board may order a variance from the terms of the land
10 use regulations in their application to the lands of the
11 petitioner that will relieve the great practical
12 difficulties or unnecessary hardship; and will not be
13 contrary to the public interest; and will be such that the
14 spirit of the land use regulations is observed, the public
15 health, safety, and welfare is secured, and substantial
16 justice is done."

17 Section 23. Section 76-16-306, MCA, is amended to
18 read:

19 "76-16-306. Management of grazing lands. A state
20 district may:

21 (1) manage and control the use of its range and
22 agricultural lands acquired under 76-16-305(2). This power
23 includes the right to determine the size of preferences and
24 permit according to a fixed method which shall be stated in
25 the bylaws and which shall take into consideration the

1 rating of dependent commensurate property and the carrying
2 capacity of the range and may be subject to reservations,
3 regulations, and limitations under the terms of agreements
4 between the state district and any agency of the United
5 States. The state district may also allot range to members
6 or nonmembers and decrease or increase the size of permits
7 if the range carrying capacity changes.

8 (2) undertake reseeding and other approved
9 conservation and improvement practices of depleted range
10 areas or ~~abandon~~ abandoned farm lands and enter into
11 cooperative agreements with the federal government or any
12 other person for the reseeding or conservation and
13 improvement practices;

14 (3) employ and discharge employees, riders, and other
15 persons necessary to properly manage the state district."

16 Section 24. Section 76-16-406, MCA, is amended to
17 read:

18 "76-16-406. Transfer of preferences. (1) Upon
19 application by a permittee, the state district with the
20 approval of the department may allow a preference based on
21 ownership or control of dependent commensurate or
22 commensurate property to be transferred to other property of
23 sufficient commensurability; however, in any transfer of
24 preference from dependent commensurate or commensurate
25 property controlled but not owned by the applicant, the

1 applicant must have had control and use of the dependent
2 commensurate or commensurate property and the preference
3 appurtenant thereto for 5 consecutive years and must have
4 established and maintained the livestock operation upon
5 which the dependency was established by use or priority
6 immediately prior to the application for transfer.

7 (2) In addition, the transfer may not interfere with
8 the stability of livestock operations or with proper range
9 management and may not affect adversely the established
10 local economy. A transfer may not be allowed without the
11 written consent of the owner or owners and ~~any~~ encumbrances
12 of the dependent commensurate or commensurate property from
13 which the transfer is to be made, and ~~a the owner or owners~~
14 ~~of any encumbrances on the property.~~ A transfer is not
15 effective until approved by the department.

16 (3) All expenses involved under the application shall
17 be borne by the applicant."

18 SECTION 25. EFFECTIVE DATE. THIS ACT IS EFFECTIVE ON
19 PASSAGE AND APPROVAL.

-End-